

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.2834 of 2014 (O&M)
Date of decision: 13.10.2015**

Manphool
Vs. ... Appellant

Bharat Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Manoj Chahal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.6766-C of 2014

For the reasons stated in the application, duly supported by an affidavit, delay of 146 days in filing the appeal, is condoned.

C. M. stands disposed of.

RSA No.2834 of 2014 (O&M)

Appellant-defendant No.7 is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit of the respondent-plaintiffs claiming declaration along with consequential relief of injunction to the effect that plaintiffs are in cultivating possession of the land in dispute and the defendants or their predecessors-in-interest have nothing to do with the land on the premise that they had acquired the status of occupancy tenants over

the land in dispute and they have become the statutory owners, thus, entitled to get transfer of the land in dispute and appellant-defendant No.7 be restrained from taking forcible possession of the land or to encroach upon more than his share, has been decreed.

Mr. Manoj Chahal, learned counsel appearing on behalf of appellant/defendant No.7 submits that the Courts below have decreed the suit vis-a-vis declaration. The declaration, aforementioned, has been granted in favour of plaintiff/respondents No.1 to 3 and appellant/defendant No.7 by taking into consideration the provisions of Section 5 of Punjab Tenancy Act, 1887 (hereinafter referred to as 1887 Act), thus, both the Courts below have committed illegality and perversity in granting the injunction as the entire property was in possession of defendant No.7 and the alleged admission in the written statement could not be taken against the appellant.

I have heard learned counsel for appellant/defendant No.7 and appraised the impugned judgments and decrees of both the Courts below.

Appellant-defendant No.7, in response to the receipt of notice of suit, filed written statement and conceded the claim vis-a-vis declaration but stated that plaintiffs wanted to encroach upon or destroy crop more than their share and therefore, should not be granted the injunction. The other defendants No.1 to 6 did not appear despite publication and were proceeded against ex parte.

The trial Court, on the basis of the documentary evidence brought on record, i.e., jamabandis Ex.P1 to Ex.P6 and Ex.P-7, khasra girdawari, and by taking into consideration the provisions of Section 5 of the 1887, Act, *ibid*, granted the declaration in favour of the plaintiffs and defendant No.7, however, refused to grant the injunction as appellant/defendant No.7 had been found in possession.

Before the Lower Appellate Court, appellant-defendant No.7 wanted to wriggle out of admission by moving an application under Order 41 Rule 27 CPC by setting up some family settlement and the same was also declined. Both the Courts below on the basis of the documentary evidence, mentioned above, found that plaintiffs and defendant No.7 were in continuous possession, much less, conformed to the provisions of the Act and therefore, granted declaration vis-a-vis ownership.

I do not intend to differ with the findings rendered by both the Courts below, particularly, when defendant No.7-appellant has conceded the claim of the plaintiffs and appellant/defendant No.7 has been restrained from taking forcible possession of the respondent/plaintiffs, therefore, no grievance at the behest of defendant No.7 could be sought by assailing the findings rendered by both the Courts below.

In view of what has been observed above, no substantial

question of law arises for determination of this Court. Resultantly, the regular second appeal is hereby dismissed.

(AMIT RAWAL)
JUDGE

October 13, 2015
savita